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CITATIONS

743108—47

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1251

FERNANDO QUINONES JIMINEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 136–143) is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered March 18, 1947 (R. 143). The petition for a writ of certiorari was filed April 15, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

1. Whether Section 2 (e) of the Federal Firearms Act, prohibiting the interstate or intraterritorial transportation of firearms by persons under indictment in any federal, state, or territorial court for a crime of violence, applies to one against whom a criminal information is pending in a Puerto Rico territorial court charging first degree murder, the filing of an information being the only method of charging a crime in the territorial courts of Puerto Rico.

2. Whether women are eligible for jury service in the District Court of the United States for Puerto Rico.

3. Whether the evidence is sufficient to sustain the verdict.

STATUTE INVOLVED

The Federal Firearms Act of June 30, 1938, c. 850, 52 Stat. 1250, provides in pertinent part as follows:

> SEC. 1 [15 U. S. C. 901]. * * * as used in this Act—
>
> * * * * * *
>
> (2) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession * * *, or the District of Columbia, and any place outside thereof; * * * or within any Territory or possession or the District of Columbia.
>
> * * * * * *

(6) The term "crime of violence" means murder, manslaughter, rape, mayhem, kidnaping, burglary, housebreaking; assault with intent to kill, commit rape, or rob; assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

* * * * *

SEC. 2 [15 U. S. C. 902]. * * *

* * * * *

(d) It shall be unlawful for any person to ship, transport, or cause to be shipped or transported in interstate or foreign commerce any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is under indictment or has been convicted in any court of the United States, the several States, Territories, possessions * * *, or the District of Columbia of a crime of violence * * *.

(e) It shall be unlawful for any person who is under indictment or who has been convicted of a crime of violence * * * to ship, transport, or cause to be shipped or transported in interstate or foreign commerce any firearm or ammunition.

* * * * *

SEC. 5. [15 U. S. C. 905]. Any person violating any of the provisions of this Act * * * shall, upon conviction thereof, be fined not more than $2,000, or imprisoned for not more than five years, or both.

STATEMENT

On December 12, 1945, an indictment in two counts (R. 1–3) was filed in the District Court of the United States for Puerto Rico charging that petitioner, on or about May 15, 1943, while under indictment for first degree murder in the District Court for the Judicial District of Humacao, Puerto Rico, transported within the territory of Puerto Rico a firearm (count 1) and firearm ammunition (count 2), in violation of Sections 2 (e) and 5 of the Federal Firearms Act, *supra*. After a trial by jury, petitioner was found guilty on both counts (R. 19, 125), and he was sentenced to imprisonment for a term of four years on each, to run consecutively; execution of the sentence on count 2 was suspended and petitioner was placed on probation for a period of five years following completion of service of the sentence on count 1 (R. 129). On appeal to the Circuit Court of Appeals for the First Circuit, the judgment of conviction was affirmed (R. 143).

The evidence against petitioner was, in brief, as follows:

At approximately 5 p. m. on May 15, 1943, petitioner drove a truck into Jiminez Sicardo Street in Caguas, Puerto Rico, and parked in front of a lumber warehouse. There was a revolver in the glove compartment of the truck. After transacting some business in the warehouse, petitioner was standing on the sidewalk beside

the truck when he suddenly stepped into the cab of the truck for a moment, stepped out again on to the sidewalk, and started shooting at one Martinez, who was also standing on the sidewalk a short distance away. (R. 59–60, 65–66, 71, 107.) A shooting duel ensued when Martinez also drew a revolver, returned petitioner's fire, and was wounded (R. 65–66). After several shots had been exchanged, petitioner threw his revolver on the truck seat, helped a wounded companion into the truck, and drove away (R. 66, 71, 75, 80).

At the time of this incident, an information was pending in the District Court of Humacao, a Puerto Rico territorial court, charging petitioner with first degree murder (R. 54–55).

At some time following the shooting incident and prior to a trial involving petitioner which occurred previously to the trial below, petitioner approached one Tomasa Ortiz, a witness of the shooting, asked her if she had been served with a summons to appear at the earlier trial, questioned her in respect of her version of the shooting incident, told her that her story was a lie, and asked her not to state in court that he had gone to see her. In respect of the revolver which he had used in the shooting, he told her that he "carried the revolver in the truck," and that "when Mr. Martinez appeared he rushed to the truck to get the revolver." (R. 67.)

ARGUMENT

1. Petitioner contends that his acts of transporting a firearm and firearm ammunition within the territory of Puerto Rico were not offenses within the purview of Section 2 (e) of the Federal Firearms Act (*supra*, p. 3) because he was not, as required by the terms of the section, under "indictment" for a crime of violence at the time, but had, rather, been charged with such a crime by the filing of an information (Pet. 5, 11–13). Petitioner's argument is based on the premise that the word "indictment," as used in the section, must necessarily, and in all circumstances, be given its strict, common-law meaning of an accusation of crime presented by a grand jury. We submit, however, that this premise is untenable and would lead to absurd results.

In the territorial courts of Puerto Rico, the institution of the grand jury is unknown; the prosecution of all crimes, regardless of their gravity, is commenced by the filing of an information by the prosecuting attorney. Puerto Rico Code of Criminal Procedure, 1935, §§ 67, 68, 72. If petitioner's argument is sound, therefore, it follows that Section 2 (e) of the Firearms Act does not and can never apply to the transportation of firearms by a person charged with a crime of violence, however grave, in a territorial court of Puerto Rico. The congressional intent, however, to proscribe and punish the interstate or

intraterritorial transportation (Section 1 (2)) of firearms by all persons who have been convicted of, or charged with, any crime of violence "in *any* court of the United States, the several States, Territories, possessions * * *, or the District of Columbia" [italics supplied], is not reasonably susceptible of doubt. Compare Section 2 (e) with Section 2 (d), *supra*, p. 3. The logic of petitioner's argument impels the conclusion that, whereas persons charged with comparatively minor crimes of violence (see Section 1 (6)) in federal courts and all state and territorial courts in which the indictment is the common means of commencing felony prosecutions are forbidden to transport firearms in interstate or intraterritorial commerce, a person formally charged with even the most serious crime of violence, first degree murder, in one of the Puerto Rico territorial courts may so transport firearms with complete impunity by virtue of the technical fact that in those courts the filing of an information, rather than the presentment of an indictment, is the normal, and, indeed, the only known method of commencing all criminal prosecutions. In view of the manifest purpose of the Firearms Act as a whole to keep deadly weapons out of dangerous hands, the insubstantiality of such a conclusion is apparent. As this Court has had frequent occasion to remind, conduct clearly intended by Congress to come within the sphere of proscribed

activities should not, by overstrict judicial construction, be held to lie without that sphere. *United States* v. *Gaskin*, 320 U. S. 527, 529–530; *United States* v. *Dotterweich*, 320 U. S. 277, 281–283; *United States* v. *Raynor*, 302 U. S. 540, 552; *United States* v. *Corbett*, 215 U. S. 233, 242; *United States* v. *Hartwell*, 6 Wall. 385, 396. The only sensible way to construe the word "indictment" in Section 2 (e), we submit, is to give it its generic meaning of formal charge or accusation (see "indictment" as defined in *Century Dictionary and Cyclopedia*, 1911; Funk & Wagnalls, *New Standard Dictionary of the English Language*, 1937; Murray, *New English Dictionary*, 1901; Webster's *New International Dictionary*, 2d ed.; cf. *Grin* v. *Shine*, 187 U. S. 181, 192), whether the accusation be by a grand jury or by an information filed by the prosecuting attorney, as the one or the other mode of initiating criminal prosecutions may be prescribed by law in a given jurisdiction. The propriety of so construing the term in the interest of effectuating the general purpose and intent of the legislation as a whole is clear, since it is well settled that a term in a penal statute need not be given its narrowest possible meaning. *Singer* v. *United States*, 323 U. S. 338, 341–342; *United States* v. *Raynor*, *supra*, 552; *United States* v. *Giles*, 300 U. S. 41, 48.

2. Petitioner further contends (Pet. 5–6, 13–17) that the trial court erred in denying his

motion to strike the entire jury panel on the ground that women were excluded from the jury list on account of sex (see R. 5, 19). The contention is without merit.

It is not disputed that women are systematically excluded from the jury lists in the District Court for Puerto Rico (see R. 7, 11, 15). This is proper practice, however. In *Crowley* v. *United States*, 194 U. S. 461, 467, decided in 1904, this Court held that under Sections 14 and 34 of the Foraker Act of April 12, 1900, c. 191, 31 Stat. 77 (the Puerto Rico Organic Act), the required qualifications for jury service in the District Court for Puerto Rico were the same as those in the local courts of Puerto Rico, as prescribed by local law. Women were then (Puerto Rico Revised Statutes and Codes, 1902, pp. 172–173) and still are (Puerto Rico Code of Criminal Procedure, 1935, §§ 186–187) specifically declared ineligible for jury service in the local courts of Puerto Rico. Consequently, unless the Act of June 25, 1906, c. 3542, 34 Stat. 466, upon which petitioner relies, made women eligible for jury service in the District Court for Puerto Rico, they are still ineligible. That Act provides in pertinent part as follows:

> That the qualifications of jurors as fixed by the local laws of Porto Rico shall not apply to jurors selected to serve in the district court of the United States for

> Porto Rico, but that the qualifications required of jurors in said court shall be that each shall be of the age of twenty-one years and not over sixty-five years, a resident of Porto Rico for not less than one year, and having a sufficient knowledge of the English language to enable him to duly serve as a juror: * * *.[1]

Congress manifestly did not, by this Act, expressly make women eligible for jury service in the District Court for Puerto Rico. And it is equally clear, for the compelling reasons stated by the court below (R. 141),[2] that Congress had no intention whatever to make women eligible by negative implication. Indeed it is plain from the legislative history of the Act, as indicated by the court below (R. 140, fn. 1), that its principal, if not its sole purpose was to eliminate knowledge of the Spanish language as an eligibility requisite for jury service in the District Court for Puerto Rico, such knowledge being required for such

[1] This Act has been amended, but in no respect here material. See 48 U. S. C. 867.

[2] The court below pointed out that the first State to permit women to serve on its juries, Kansas, did not do so until 1913, seven years after the enactment of this Act; that it was impossible to believe that Congress was pioneering in the movement to put women on juries without so expressing itself in unmistakable terms; that it could not be assumed that Congress would require women on federal juries in a community where local law does not impose the burden of jury service upon them, particularly in a community with a cultural and social background so different from our own.

service in the local courts, because of the difficulty experienced in finding adequate numbers of persons who had a sufficient command of English to serve on juries in the District Court for Puerto Rico and who were also qualified for local jury service. S. Rep. No. 3474, 59th Cong., 1st sess.; H. Rep. No. 4218, *id.* The present case, therefore, is clearly distinguishable from *Ballard* v. *United States*, 329 U. S. 187.[3]

3. Petitioner's contention that the evidence is insufficient to support the verdict (Pet. 6–7, 21–23) is based on the assumption that the jury were bound to believe the testimony of the defense witnesses. The evidence pointing to petitioner's guilt, summarized in the Statement, *supra*, plainly warranted the verdict of guilty.[4]

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[3] Petitioner also contends that Negroes and wage earners were systematically excluded from the jury list (Pet. 5, 7, 10, 14), but, as observed by the court below (R. 139), the contention is unsupported by the record. In respect of Negroes, see R. 8, 14; in respect of wage earners, see R. 7, 8–9, 14, 15. Petitioner's further contention that the jury did not represent a true cross-section of the community because prospective jurors were sought from exclusive private clubs and organizations (Pet. 6, 8, 10, 18–19) is likewise without merit. The record clearly reflects that the clerk and jury commissioner made every effort to secure names of English-speaking persons for jury service from every practicable source (R. 8–9, 13, 14, 15, 16, 17–19).

[4] Petitioner's further contention (Pet. 8, 19) that the trial court erroneously charged the jury on the issue of what constituted transportation within the meaning of Section 2 (e) is clearly without merit (cf. R. 123 with R. 125). As the court below observed (R. 143), moreover, petitioner's counsel

CONCLUSION

The petition for a writ of certiorari presents no question requiring further review by this Court. We therefore respectfully submit that it should be denied.

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MAY 1947.

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expressed satisfaction with the charge on the transportation question (see R. 125). Petitioner's assertion (Pet. 20) that the prosecuting attorney made a statement to the jury that petitioner had approached the petit jury to influence their decision is unsupported by the record.

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